

13-150

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Rodney McDonaldFederal Communications Commission
Office of the Secretary

From: Jim Rosenthal
Sent: Tuesday, July 02, 2013 11:34 AM
To: Marlene Dortch; Patrick Halley; Rodney McDonald
Cc: Jessica Rosenworcel; Ajit Pai; Mignon Clyburn; Marlene Dortch; Robert McDowell; Sheryl Segal; Nicholas Degani; Sean Lev; Julie Veach; Kris Monteith; Lisa Gelb; Kimberly Scardino; Carol Matthey; Jane Jackson
Subject: Comment Letter Submission to the FCC - WC Docket No. 13-150/WC 13-149 - Regarding Verizon's Application to Discontinue Wireline Services on Fire Island
Importance: High

Sent Via US Mail

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Subject -- WC Docket No. 13-150 and Comp. Pol. File No. 1115: Section 214 Application, discontinuance of interstate wireline telecommunications services under section 63.71(c) of the FCC's rules / Applicants: Verizon New Jersey Inc. and Verizon New York Inc. and WC Docket No. 13-149 and Comp. Pol. File No. 1112: Application of Verizon New Jersey Inc. and Verizon New York to Discontinue Telecommunications Services.

Letter to the FCC Regarding Verizon's Application to Discontinue Interstate Wireline Telecommunications Services on Fire Island

Dear Secretary Dortch, Deputy Director Halley and Members of the FCC Competition Policy Division, Wireline Communications Bureau:

Please include this letter into the Comments on the Application of Verizon-NY to discontinue wireline telecommunications services to Western and Central portions of Fire Island. I am a resident of Fire Island, and hence an Affected Party, so this is not an Ex-Parte Filing Comment

Verizon NY Inc filed an application with the FCC under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214, and section 63.71 of the Federal Communications rules, 47 C.F.R. 63.71, to discontinue certain domestic telecommunications services in certain parts of New Jersey and New York affected by Hurricane Sandy – which includes Fire Island. The application indicates that Verizon requests authority to discontinue three copper-based special access services. Verizon asserts that copper wireline facilities used to provide these services in certain parts of New Jersey and New York were destroyed or rendered inoperable by Hurricane Sandy on or after October 29, 2012. Verizon indicates that the facilities are located in New Jersey and New York and are specifically referenced in network change notices that Verizon filed pursuant to its waiver for disaster planning and response on May 10, 2013.

In the FCC's Public Notice requesting comments on the Application of Verizon-NY to discontinue wireline telecommunications services to Western and Central portions of Fire Island, where Hurricane Sandy damaged its copper facilities beyond repair, Verizon-NY has represented to the FCC that the discontinued services will be grandfathered for customers served by functioning copper lines, and for customers to whom the discontinued services cannot be restored, Voice Link will be offered as the sole replacement. For data services, Voice Link subscribers will be offered 4G LTE broadband services, to be provided by Verizon Wireless. Without any further action by the FCC, this Application will be deemed granted after sixty days, and thus, Verizon-NY will be permitted to discontinue wireline telecommunications services to Western and Central Fire Island on or after August 27, 2013.

The FCC seeks comment on Verizon's requests for authority to discontinue the Affected Services in the Service Areas, including comment on its waiver request, the steps it has taken to notify customers given the particular circumstances in this case, the availability of alternative services including the steps Verizon has taken to offer alternative service to customers, and any other relevant issues in light of the above mentioned factors.

The FCC further seeks to hear public comments on what impact, if any, should the circumstances of this case have on the Commission's traditional analysis, including the fact that many of the affected customers have already lost service. Questions needing to be addressed include: Is Voice Link service a reasonable substitute for the Affected Services? Are there features, functions, or capabilities that were available over the Affected Services that would not be available over the Voice Link service? What is the significance of the features, functions and capabilities that are not currently available over the Voice Link service?

Finally, the FCC advises that Affected Parties expressing concern should identify whether any conditions could ensure that the discontinuance of Verizon's wireline service does not harm the public interest.

Please know that it is the position of the thousands of residents and businesses of Fire Island, and many other elected officials including the NYS Attorney General, that an FCC grant to Verizon of a discontinuance authorization would pose an unreasonable degree of customer hardship, and must be rejected – or at the very least delayed pending further investigation.

As a general matter, consumer protection is most effectively provided and ensured when consumers have a choice among different service providers and each provider fully discloses all relevant terms and conditions to consumers, to ensure consumers can make an educated choice among services to find that which best fits his or her needs and preferences. Two means of ensuring that consumers in non-competitive markets enjoy the same benefits as those in fully competitive markets is to require the incumbent 1) to maintain nondiscriminatory rates in all of its service areas, and 2) to offer the same level of service quality in non-competitive areas as is provided in competitive areas.

Ubiquitous broadband infrastructure has become crucial to our nation's economic development and civic life. (See generally Federal Communications Commission, Connecting America: The National Broadband Plan (rel.Mar. 16, 2010), at xi (National Broadband Plan). Businesses need broadband to start and grow; adults need broadband to find jobs; children need broadband to learn. Broadband enables people with disabilities to participate more fully in society and provides opportunity to Americans of all income levels. Broadband also helps lower the costs and improve the quality of health care. As important as these benefits are in America's cities— where more than two-thirds of residents have come

to rely on broadband (See Industry Analysis and Technology Division, Wireline Competition Bureau Internet Access Services: Status as of December 31, 2009, at chart 19 (Dec. 2010) (Dec. 2010 Internet Access Services Report —the distance-conquering benefits of broadband can be even more important in America's more remote small towns, rural and insular areas, and Tribal lands. Furthermore, the benefits of broadband grow when all areas of the country are connected. More users online means more information flowing, larger markets for goods and services, and more rapid innovation. Congress recognized as much in 1996 when it directed the Commission to examine regularly whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner,(47 U.S.C. § 1302(a) and more recently in February 2009 when it tasked the Commission with developing a National Broadband Plan "to ensure that all people of the United States have access to broadband capability," and a "strategy for achieving affordability of such service and maximum utilization of broadband infrastructure." American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (Recovery Act)).

Title II of the FCC's Regulatory Regime must be applied to the situation on Fire Island -- specifically, the sections in Title II that would be applied to broadband internet services which are the core powers to be asserted by the FCC enumerated in Sections 201, 202 and 208. These include price, service and nondiscrimination regulation. 47 U.S.C. § 201 treats service providers as common carriers, requires them to provide service, requires interconnection, requires that all "charges ... be just and reasonable", and authorizes the FCC to write "rules and regulations as may be necessary in the public interest". 47 U.S.C. § 202 provides, in part, that "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage." 47 U.S.C. § 208 provides that anyone may file a complaint against a common carrier, and that the FCC has adjudicatory authority with respect to that complaint. 47 U.S.C. § 254 provides for FCC administered universal service tax and subsidy programs. And 47 U.S.C. § 255 pertains to access by persons with disabilities.

Most recently, in the American Recovery and Reinvestment Act of 2009 ("Recovery Act"), Congress directed the Federal Communications Commission (FCC) to create a national broadband plan by February 17, 2010, that seeks to "ensure that all people of the United States have access to broadband capability and ... establish[es] benchmarks for meeting that goal." "American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115 § 6001(k)(2) (2009). Among other things, the FCC is to provide "an analysis of the most effective and efficient mechanism for ensuring broadband access by all people of the United States" Id. at § 6001(k)(2)(A) and "a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public."

Rather than automatically granting Verizon authority for the discontinuance of interstate wireline telecommunications services including interstate interexchange and exchange access services on Fire Island in the Service Areas on or after **August 27, 2013** , in accordance with Verizon's filed representations, the FCC should establish a process appropriate for situations where network infrastructure is damaged during emergencies – and where carriers wish to rebuild with new, untested services. The Commission should decide the basic issues underlying this process in a notice of inquiry or rulemaking proceeding to solicit public comment on how carriers and subscribers should proceed when handling post-disaster network damage. With regard to the specifics of the Fire Island/NJ Barrier Island request, the residents and businesses of Fire Island do not contend that Verizon's recently submitted § 214(a) request should be rejected simply because the new service is not copper-based. However, regardless of the physical infrastructure used, the FCC should ensure that this transition does not constitute a step backward for subscribers. To this end, the Commission should be particular watchful for new limitations in services that disparately impact vulnerable communities.

Inevitably there will be some features that cannot be supported by the new technology of a fixed wireless network. In those cases, the FCC should acknowledge when it is giving carriers permission to discontinue capabilities customers have come to expect and responsibly transition them off the service according to a set plan. It is particularly inappropriate for communities struggling to rebuild to lose unexpectedly capacities on which they have long relied. For small businesses and emergency first-responders in particular that depend on faxes, credit card transactions, and other electronic transactions to do business and serve the general public, the sudden and unanticipated loss of these services and the need to find potentially more expensive alternatives has significant impact.

The FCC must set a minimum threshold criteria for service during the pendency of its deliberations on the transition, and then require carriers, like Verizon, to bring their networks up to the standards previously delivered under its fixed wireline service.

As you might know, there has been a great deal of controversy in the wake of Verizon of New York's decision to terminate land line telephone service to the residents and businesses of Fire Island. Since initial news reports in the Spring, the issue has significantly heated up, and is now pending before the NYS PSC, as CASE- 13-C-0197 – Tariff filing by Verizon

New York Inc. to introduce language under which Verizon could discontinue its current wireline service offerings in a specified area and instead offer a wireless service, called VoiceLink, as its sole service offering in the area.

For a review of all the public record filings and the status currently before the NYS PSC, please see the NYS PSC DMM on Case 13-C-0197 at: (<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterSeq=42688>). There you will see more than 200 Interested Party Comments, many from Fire Island residents and businesses, and many from concerned State elected) and others interested not to permit Verizon to be granted a tariff exemption by the NYS PSC to “kill the copper” and be permitted to “up sell” more expensive and unregulated broadband products to an underserved, captive, geography. In a filing before the NYS PSC, the NYS Attorney general specifically identified Verizon’s corporate strategy, as stated by Verizon’s Chairman and CEO before an investors conference, to kill the copper and transition rural and hard-to-serve customers toward more expensive wireless services, as evidence of Verizon of New York’s clear lack of commitment to maintaining its landline services as mandated under law. (See OAG submits supplemental evidence)

I believe this is the first time a telecommunications provider has sought such an exemption from a regulatory body – so it is a test case of sorts for a much larger Corporate roll-out effort by Verizon with tremendous implications for both customers -- and in setting regulatory precedent.

While this letter is from an individual Fire Island resident, this letter also represents the unanimous sentiment of the thousands of residents and many dozens of businesses located in Fire Island’s 17 communities.

Finally, while I welcome Verizon’s stated efforts to enhance its wireless capabilities on Fire Island and throughout New York, I do have several concerns with Verizon’s seeming attempt to force consumers to migrate to wireless broadband offerings. First, the FCC and the NYS PSC do not oversee the rates for wireless Internet access services, yet the industry is highly concentrated, meaning that municipalities cannot rely on market forces to yield affordable rates. Wireless alternatives are more expensive than wireline services, and there is negligible competitive pressure to cause Verizon Wireless to offer reasonable rates for wireless service. Second, unlike DSL, FiOS, and cable-based broadband alternatives, the usage for wireless broadband service is metered, and when consumers exceed a usage cap, they must pay high rates for the above-cap usage (and this is in addition to monthly rates that are already high). Where Verizon exits the wireline broadband market, residents and business of Fire Island will have no wireline broadband option – since there is no cable company offering. Our residents and businesses should not be subjected to monopoly pricing and service quality for broadband service. For the residents of Fire Island, there is no cable company offering broadband through a cable modem– and DSL historically has been the only reliable broadband service, making our residents and businesses especially dependent on the traditional telephone network.

Cutting the copper, as Verizon’s CEO put it in a recent investor conference call, may make economic sense for Verizon’s shareholders because it reduces labor costs and by terminating the DSL service, Verizon can then “up sell” more expensive broadband services. But satisfying a corporation’s economic objectives is not the role or mandate of a federal or state regulator, such as the FCC and NYS PSC. Serving the public interest, while at the same time balancing the needs for corporate profit to spur innovation, is the core mission of the FCC and the NYS PSC.

A well-established State and Federal regulatory principle is that consumers in all regions of the nation, including rural, insular, and high-cost areas, should have access to telecommunications and information services at rates that are reasonably comparable to those services and charges provided in urban areas.

Bringing robust, affordable broadband to all Americans is the great infrastructure challenge of our time. The private sector argues it is taking the lead in meeting this challenge, but in areas of the country where it is not economically viable to deploy and/or operate certain lower-cost broadband networks, such as Fire Island, the private sector is coming up woefully short.

The FCC’s review and investigation is essential for many reasons, among which are the following:

- Voice Link creates numerous new threats to public safety, which, in turn, would hamper Fire Island municipalities’ ability to protect their communities.
- Voice Link creates an incentive for Verizon to allow its copper network to deteriorate and for it to abandon its copper outside plant prematurely on Fire Island. When outside plant is inadequately maintained, consumers’ safety is jeopardized because their dial tones may not function when they need to reach emergency services.

- Voice Link does not support broadband access to the Internet to residents and businesses on Fire Island, and, therefore, Verizon's new service undermines Fire Island municipalities' efforts to spur economic development.
- Voice Link does not support point-of-sale transactions for Fire Island businesses, and, therefore, would harm small businesses and municipalities' economy on the barrier island.
- Voice Link does not support LifeAlert or other monitoring services used by Fire Island residents, potentially endangering members of the public who rely on these services.
- Voice Link is not available to Lifeline telephone service customers on Fire Island. Affordable traditional telephone service would become unavailable in any area served only by Voice Link.
- Voice Link service is not as reliable as telephone service delivered over a properly-maintained copper or fiber-optic network, since wireless signal is often weak, spotty, or overburdened by other network traffic.

The FCC should also require Verizon to satisfy as its burden of proof that:

- (1) cost to repair or replace the Sandy damaged copper wired lines on Fire Island, to insure that service going forward, will be equivalent or better than the scope, level of quality, and at the pre-Sandy rates;
- (2) That Verizon will not be able to earn just and reasonable compensation, and a reasonable rate of return on equity on its prudent investment if required to repair or replaced copper wired lines;
- (3) That Verizon and the FCC will employ the Telric method of analysis mandated by the FCC, and upheld in *Verizon Communications, Inc. v FCC*, 219 F. 3d 744 (2002), affirmed by the Supreme Court.
- (4) The FCC should consider, in arriving at its determination of a reasonable rate of return, the \$7 billion dividend distributed in May 2013 by Verizon Wireless, a subsidiary, to its parent Verizon Communications, which has a 55% ownership interest in Verizon Wireless;
- (5) That Verizon's abandonment of its copper wired lines, and Voice Link proposal do not violate the franchise agreement between Verizon and the Town of Islip; New York.
- (6) The FCC should consider, in determining whether the Verizon proposal violates 47 U.S.C. Secs. 151, 201, 202, 254(b)(2)(3) and (4), its Carrier of Last Resort (COLR)) and Universal Service obligations, and anti-trust requirements,
- (7) The Verizon proposal constitutes unjust enrichment given the fact that, in return for its commitments to provide universal service as the carrier of last resort, which included the installation and continuance of its copper wired facilities, it received significant public benefits, including deregulation of some services, increased rates, public investment in networks, and Broadband Grant programs
- § (8) Finally, Voice Link service is a Title II telecommunications service. (See 47 U.S.C. § 153). Voice Link is a voice service that is not mobile (unlike CMRS service) and uses the public switched telephone network. The FCC will therefore need to consider how obligations like those found in sections 251 and 271 of the Act apply to an infrastructure like Voice Link's. These considerations can occur either simultaneously with, or parallel to, consideration of Verizon's § 214(a) request.

According to the NYS PSC:

“Core customers are those in need of regulatory protection (i.e., residential and business customers **who lack competitive wireline alternatives**, are on Lifeline, or have special needs (e.g., those with medical conditions, or elderly, blind, or disabled customers).”

The residents and businesses of Fire Island meet the definition of Core Customers. And according to the NYS PSC, Verizon defines Voice Link as a wireless service to replace a wireline service. (See Verizon New York Inc., Order Conditionally Approving Tariff Amendments In Part, Revising In Part, and Directing Further Comments.

On Fire Island, there are no competitive wireline alternatives to Verizon of New York, Inc's copper landline service.

On December 17, 2010, the NYS PSC adopted a revised Service Quality Improvement Plan (SQIP) for Verizon New York Inc.. Among other things, the SQIP Order directed Verizon to focus its service quality efforts on core customers, (Case 10-C-0202, Verizon Service Quality Improvement Plan, Order Adopting Verizon New York Inc.'s Revised Service Quality Improvement Plan with Modifications (issued December 17, 2010), (SQIP Order). finding that those customers had limited recourse available to them, other than regulatory protections. The SQIP Order, in Case 10-C-0202, directed Verizon to ensure that its revised SQIP met the NYS PSC's revised timeliness-of-repair out-of-service over 24 hours or service affecting over 48 hours (OOS>24 or SA>48) performance standards (e.g., 20% threshold) for its core customers by the end of 2010.

Fire Island residents and businesses are "residential and business customers who lack competitive WIRELINE alternatives" and meet the standard set in NYS PSC Case 10-C-0202 – Verizon Service Quality Improvement Plan. ORDER TO SHOW CAUSE. (Issued and Effective November 28, 2012, at:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7BBB5EE03B-6CFE-4383-8D84-A00CE773B76C%7D>, and See CASE 10-C-0202 – Verizon Service Quality Improvement Plan. ORDER TO SHOW CAUSE (Issued and Effective February 17, 2012) at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B27A3ABB1-DD8A-4194-AB22-E7635C219D79%7D>

As of December 31, 2012, Verizon served approximately 298,346 core customers, or about 7.7% of Verizon's 3,877,247 total customers. The SQIP defines core customers as Lifeline customers; special needs customers, that is, elderly, blind, or the disabled; and business and residential customers living in areas lacking competitive wireline alternatives to Verizon service. Approximately 129,830 core customers are located in New York City, 15,824 in Long Island, and 15,653 in Midstate. The average percentage of core customers in Verizon's service territory has ranged between 7.7% and 8%, since the initiation of its SQIP in March 2011.

The NYS PSC's focus on core customers relieved Verizon from significant timeliness-of-repair service reporting requirements on about 90% of its access lines. Although affording Verizon additional flexibility to address events that can cause service disruptions, the NYS PSC continued its expectation that Verizon would provide sufficient administrative focus and resources in every one of its service areas to ensure that Verizon would meet the NYS PSC's 20% threshold for both OOS>24 and SA>48 metrics during such periods. Verizon's violation in Fire Island from October 2012 to the present demonstrates that it knowingly failed or neglected to comply with the timeliness-of-repair performance requirements in the Commission's SQIP Order.

The service quality improvement plan (SQIP) requires Verizon's repair efforts to focus on what we have termed core customers; That is the approximately 8 percent of Verizon customers who either have no competitive wireline alternative, or who are lifeline customers, or who have special needs, such as the elderly or people with medical issues.

The FCC cannot let natural disasters become opportunities for carriers to shortcut the deliberations currently underway to comprehensively consider how best to handle the phone network's transition to IP- based technologies.

In the words of the Treasurer of Suffolk County, NY:

The impact on this community of residents and the hundreds of thousands of visitors during the summer season will be devastating on many fronts. To use Super Storm Sandy, an unprecedented storm which decimated sections of New York and New Jersey, as an excuse to force the residents of Fire Island off traditional landline service onto wireless is unconscionable.

LIPA had crews working all over Fire Island and restored power to everyone within two weeks, but Verizon did very little. It appears that this might be a strategy to force Verizon's customers away from the protection of tariffed services, which holds them accountable to the (NYS regulator) and off into the unregulated wireless arena.

A move like this would definitely compromise public safety and emergency services, put an undue burden on local municipalities and threatened to damage and undermine an already compromised quality of life for the residents and visitors, and further erode the fragile economic climate for the businesses on the Island.

Thank you for your consideration on this important matter to Fire Island residents, and to residential telecommunications customers throughout New York State and the Nation.

Sincerely,

Jim Rosenthal
Community of Dunewood, Fire Island, Town of Islip, New York.

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